

REMARKS

Applicant has amended the specification and claims in response to the objection to the specification to place the application in proper U.S. format and to provide claims in proper grammatical and idiomatic English. Claim 10 has been recast in independent form as claims 19 and 20, with amendments in order to make it fully a proper claim. Since this application was, indeed, filed in a language other than English, the Office's rules require the English-language specification to be an exact translation of the original, thus limiting the extent to which applicant can amend the specification in the interest of style. If the Examiner can identify passages of the specification she considers to be unclear, the undersigned will endeavor to correct the translation to improve clarity. Applicant has also amended claims 4-18 to eliminate improper multiple dependency. Applicant does feel compelled to note for the record that patent application claims are by necessity drawn as "run on" sentences and are not intended to be drafted in a "literary" style. The amendments above serve to overcome the indefiniteness rejection without narrowing claim scope. No new matter has been added. The objections to the specification and claims and the rejection of claims 1-3 under 35 USC 112, second paragraph, should be withdrawn.

Applicant notes the provisional double patent rejections and respectfully requests that these rejections be held in abeyance to await the issuance of the cited applications as patents, if that occurs.

Claim 1 stands rejected as anticipated by Marnay, and claims 2 and 3 stand rejected as obvious on Marnay alone. The Examiner's position boils down to saying that Marnay discloses openings 115, 116, 125 and 126 in the closure plates and that it would have been an obvious matter of design choice to make Marnay's openings in the form of slits. These rejections are respectfully traversed.

The Examiner's application of Marnay fails to give weight to the requirement of applicant's original and amended claims that "the pair of receiving openings [arranged in lateral side faces] assigned to at least one of the closure plates has an extended shape extending in a

direction toward the other closure plate.” Although Marnay’s structure is similar to applicant’s invention, it differs significantly from the invention in that (a) Marnay’s receiving holes are not in lateral side faces of the cover plates viewed relative to the implanted but are in a front (or anterior face) and (b) Marnay’s projections and receiving holes are circular. That disposes of the anticipation rejection since Marnay identically discloses neither of these features of applicant’s invention.

The obviousness rejection similarly falls because there is no reason why a person of ordinary skill in the art looking at Marnay would have wanted to give Marnay’s receiving holes other than a circular shape, let alone an extended shape extending in the direction of the other closure plate. The case law cited by the Examiner a support for the obviousness rejection fails to take into account the factual differences between Marnay and the claimed invention.

First, as noted above, Marnay’s openings are in the fronts, not the sides, of the closure plates; second, the receiving holes are the same size and shape as the projections they receive. Given the manner in which Marnay’s prosthesis system is put together and used, there is nothing in Marnay that would have motivated a person of ordinary skill in the art to move the receiving holes from the front to the sides of the closure plates, and the Examiner has pointed to nothing in Marnay as evidence of such a motivation.

In addition, Marnay’s projections and receiving holes are circular because the adjustment of Marnay’s system does not take into account differing thicknesses of sliding cores. As explained in the passage at col. 6, lines 4-21, cited by the Examiner, the projections are on prosthesis positioning pliers that hold the prosthesis securely while being driven into place. For the openings in Marnay to be formed as openings of an extended shape (i.e., not round) or slits extending in the direction of the other closure plate would interfere with the use and operation of Marnay’s prosthesis as disclosed. These differences are not matters of simple design choice as contended by the Examiner, so the invention of claims 1-3 could not have been obvious from Marnay.

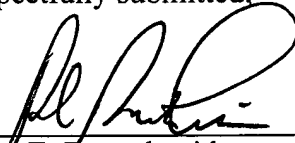
The remaining claims are patentable by virtue of their dependency from allowable claims as well as by virtue of their own limitations.

Early action allowing claims 1-7 and 9 and 11-20 is solicited.

In the event that the transmittal letter is separated from this document and the Patent and Trademark Office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing docket no. **246472005100**.

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